**St. Regis Paper Company *and* District No. 99, International Association of Machinists and Aerospace Workers, AFL-CIO.** Case 1-CA-12715

April 2, 1981

## SUPPLEMENTAL DECISION AND ORDER

On December 11, 1978, the National Labor Relations Board issued its Decision and Order in this proceeding.[1] The Board found, *inter alia*, that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize or bargain with District No. 99, International Association of Machinists and Aerospace Workers, AFL-CIO, in a certified unit of garage employees at Bucksport, Maine, to which garage employees at First Machias Lake, Maine, had been accreted, and to which the Board added two nonsupervisory mechanics on the harvesting maintenance crew as well. The Board also found that Respondent violated Section 8(a)(3) and (1) of the Act by transferring employees Ervin Googins and Wayne Haslam from its First Machias Lake garage facility to its Bucksport garage in an effort to shape the unit by transferring employees who were union members.

After filing an application for enforcement of its order with the United States Court of Appeals for the First Circuit, the Board filed a motion to withdraw its application for enforcement in order to allow the Board to reconsider its Decision in light of various decisions of that court involving the standard to be used in adjudging alleged violations of Section 8(a)(3) of the Act.[2] On July 9, 1979, the court granted the Board's motion.[3] Thereafter, the Board issued its decision in *Wright Line, a Division of Wright Line, Inc.*,[4] in which the Board set forth formally the test for causation to be used in resolving cases alleging violations of Section 8(a)(3) of the Act.

Having duly reconsidered the matter, we have decided to reaffirm the Board's original Decision and Order herein.

Regarding the 8(a)(3) violation, the record demonstrates that Respondent's personnel manager, Allen Deabay, expressly admitted that the selection of the two mechanics for transfer from First Machias Lake to Bucksport to fill vacancies was based on the fact that they were members of the Union. Respondent attempts to defend its action by asserting that it had been freely transferring employees to temporary assignments for a number of years based on "temporary need." In light of the testimony of Respondent's own representative that the criteria for these transfers was union membership, and the absence of any reference to a temporary need for the affected employees, we find that Respondent has failed to demonstrate that it would have transferred employees Googins and Haslam had they not been union members. Under any analysis of this record, including that enunciated by the Board in *Wright Line, supra*, it is evident that Respondent's transfer of Googins and Haslam was discriminatory. Accordingly, we reaffirm our conclusion that Respondent's transfer of Googins and Haslam to its Bucksport garage violated Section 8(a)(3) and (1) of the Act.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby reaffirms its Decision and Order issued in this proceeding on December 11, 1978 (239 NLRB 688).

[1] 239 NLRB 688.

[2] *N.L.R.B.* v. *Eastern Smelting and Refining Corporation*, 598 F.2d 666 (1st Cir. 1979); *Liberty Mutual Insurance Company* v. *N.L.R.B.*, 592 F.2d 595 (1st Cir. 1979); *Coletti's Furniture, Inc.* v. *N.L.R.B.*, 550 F.2d 1292 (1st Cir. 1977); and *N.L.R.B.* v. *Billen Shoe Co., Inc.*, 397 F.2d 801 (1st Cir. 1968).

[3] On July 14, 1980, the Charging Party Union filed a motion to sever, requesting that the Board sever the 8(a)(3) charge from the 8(a)(5) charge. In the alternative, the Charging Party requested dismissal of the 8(a)(3) charge. On August 7, 1980, the Board issued an Order denying the Charging Party's alternative request to dismiss the 8(a)(3) charge, and a Notice To Show Cause why the Board should not sever the 8(a)(3) charge from the 8(a)(5) charge. Thereafter, the General Counsel and Respondent filed responses to the Notice To Show Cause. The General Counsel also filed a response to Respondent's answer to Notice To Show Cause and a motion to strike a portion of Respondent's response. The General Counsel's motion to strike is hereby denied because it has no material bearing on the Notice To Show Cause.

The Charging Party's motion to sever is also hereby denied.

[4] 251 NLRB 1083 (1980).